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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 AMANDA MCBRIDE,

8 Plaintiff,

9 v.

10 CENTRAL WASHINGTON
11 HEALTH SERVICES
12 ASSOCIATION, a Washington public
benefit corporation, and CENTRAL
WASHINGTON HOSPITAL, a
Washington non-profit corporation,

13 Defendants.

NO: 2:16-CV-243-RMP

ORDER GRANTING STIPULATED
MOTION FOR PROTECTIVE
ORDER

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15 BEFORE THE COURT is the parties' motion for entry of a stipulated
16 "Protective Order Regarding Confidentiality," ECF No. 56. Having reviewed the
17 protective order and the remaining record, the Court finds good cause to grant the
18 motion and enter the protective order.

19 Accordingly, **IT IS HEREBY ORDERED** that the parties' Stipulated
20 Motion for Entry of Protective Order, **ECF No. 56**, is **GRANTED**. The protective
21 order in effect is set forth below.

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, commercially valuable, or private information for which special protection may be warranted. Disclosure of such confidential information may cause financial or competitive harm to one or all Parties. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.

2. DESIGNATED MATERIAL

2.1 “Designated Material” shall include the documents, tangible items, or testimony produced, elicited, or otherwise exchanged in this action which the party producing or disclosing such material (the “Designating Party”) designates as “Confidential.”. Designated Material may include, but is not limited to, names and contact information of patients and employees; personnel information related to non-parties; information maintained as confidential during the normal course of business related to sales, pricing, revenue, strategy and other commercial interests; and medical records.

2.2 Designated Material marked “Confidential” shall include any document, file, portion of file, transcribed testimony, or other material that the Designating Party in good faith reasonably believes comprises confidential information related to patients, employees, commercial interests, or other

1 information that could cause commercial, professional, or personal harm through
2 disclosure.

3 3. SCOPE

4 The protections conferred by this Order cover not only Designated Material
5 (as defined above), but also (1) any information copied or extracted from
6 Designated Material; (2) all copies, excerpts, summaries, or compilations of
7 Designated Material; and (3) any testimony, conversations, or presentations by
8 parties or their counsel that might reveal Designated Material. However, the
9 protections conferred by this Order do not cover information that is in the public
10 domain or becomes part of the public domain through trial or otherwise; provided
11 that Designated Material that become public through violation of this Order will
12 continue to be protected by the Order.

13 4. ACCESS TO AND USE OF DESIGNATED MATERIAL

14 4.1 Basic Principles. A receiving party may use Designated Material that
15 is disclosed or produced by another party or by a non-party in connection with this
16 case only for prosecuting, defending, or attempting to settle this litigation.
17 Designated Material may be disclosed only to the categories of persons and under
18 the conditions described in this Order. Designated Material must be stored and
19 maintained by a receiving party at a location and in a secure manner that
20 reasonably ensures that access is limited to the persons authorized under this
21 Order.

1 4.2 Disclosure of “Confidential” Information or Items. Unless otherwise
2 ordered by the Court or permitted in writing by the Designating Party, material
3 designated as “Confidential” may be disclosed only to the following persons:

4 (a) the receiving party;

5 (b) the receiving party’s counsel of record in this action, as well as
6 employees of counsel to whom it is reasonably necessary to disclose the
7 information for this litigation;

8 (c) the officers, directors, and employees (including in-house
9 counsel) of the receiving party to whom disclosure is reasonably necessary for this
10 litigation;

11 (d) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

14 (e) the Court, court personnel, and court reporters and their staff;

15 (f) copy or imaging services retained by counsel to assist in the
16 duplication of Designated Material, provided that counsel for the party retaining
17 the copy or imaging service instructs the service not to disclose any Designated
18 Material to third parties and to immediately return all originals and copies of any
19 Designated Material;

20 (g) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
2 Party or ordered by the court. Pages of transcribed deposition testimony or
3 exhibits to depositions that reveal Designated Material must be separately bound
4 by the court reporter and may not be disclosed to anyone except as permitted under
5 this Order;

6 (h) the author or recipient of a document containing the
7 information or anyone shown on the document as having received it in the ordinary
8 course of business.

9 4.3 Filing Designated Material. Before filing Designated Material or
10 discussing or referencing such material in court filings, the filing party shall confer
11 with the Designating Party to determine whether the Designating Party will remove
12 the confidential designation, whether the document can be redacted, or whether a
13 motion to seal or stipulation and proposed order is warranted.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.
16 Each party or non-party that designates information or items for protection under
17 this agreement must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The Designating Party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify, so that other portions of the material, documents,
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1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
6 to impose unnecessary expenses and burdens on other parties) expose the
7 Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, the Designating Party must
10 promptly notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order, or as otherwise stipulated or ordered, disclosure or production of
13 discovery material that qualifies for protection under this Order must be clearly so
14 designated before or when the material is disclosed or produced.

15 (a) Information in documentary form (*e.g.*, paper or electronic
16 documents and deposition exhibits, but excluding transcripts of depositions or
17 other pretrial or trial proceedings): the Designating Party must affix the words
18 "CONFIDENTIAL" to each page that contains Designated Material. If only a
19 portion or portions of the material on a page qualifies for protection, the
20 Designating Party also must clearly identify the protected portion(s) (*e.g.*, by
21 making appropriate markings in the margins).

1 (b) Testimony given in deposition or in other pretrial proceedings:
2 the parties and any participating non-parties must identify on the record, during the
3 deposition or other pretrial proceeding, all protected testimony, without prejudice
4 to their right to so designate other testimony after reviewing the transcript. Any
5 party or non-party may, within fifteen days after receiving the transcript of the
6 deposition or other pretrial proceeding, designate portions of the transcript, or
7 exhibits thereto, as Designated Material. Prior to the expiration of the fifteen-day
8 period, the entire deposition transcript shall be treated as “CONFIDENTIAL.” If a
9 party or non-party desires to protect Designated Material at trial, the issue should
10 be addressed during the pre-trial conference.

11 (c) Other tangible items: the Designating Party must affix in a
12 prominent place on the exterior of the container or containers in which the
13 information or item is stored the word “CONFIDENTIAL.” If only a portion or
14 portions of the information or item warrant protection, the Designating Party, to
15 the extent practicable, shall identify the protected portion(s).

16 5.3 Failures to Designate. A failure to designate qualified information or
17 items does not, standing alone, waive the Designating Party’s right to secure
18 protection under this Order for such material. Upon receiving notice of a
19 designation of material as “CONFIDENTIAL,” even if sometime later than the
20 information was originally produced or disclosed, the receiving party must make
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1 reasonable efforts to ensure that the material is treated in accordance with the
2 provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a
6 Designating Party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption
8 or delay of the litigation, a party does not waive its right to challenge a
9 confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any
12 dispute regarding confidential designations without Court involvement. Any
13 motion regarding confidential designations or for a protective order must include a
14 certification, in the motion or in a declaration or affidavit, that the movant has
15 engaged in a good faith meet and confer conference with other affected parties in
16 an effort to resolve the dispute without Court action. The certification must list the
17 date, manner, and participants to the conference. A good faith effort to confer
18 requires a face-to-face meeting or a telephone conference.

19 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
20 Court intervention, the Designating Party may file and serve a motion to retain
21 confidentiality. The burden of persuasion in any such motion shall be on the

1 Designating Party. Frivolous challenges, and those made for an improper purpose
2 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
3 expose the challenging party to sanctions. All parties shall continue to maintain the
4 material in question as confidential until the Court rules on the challenge.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
6 IN OTHER LITIGATION

7 If a party is served with a subpoena or a court order issued in other litigation
8 that compels disclosure of any information or items designated in this action as
9 “CONFIDENTIAL,” that party must:

10 (a) promptly notify the Designating Party in writing and include a
11 copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena
13 or order to issue in the other litigation that some or all of the material covered by
14 the subpoena or order is subject to this Order. Such notification shall include a
15 copy of this Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the Designating Party whose Designated Material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 Designated Material to any person or in any circumstance not authorized under this
21 Order, the receiving party must immediately (a) notify in writing the Designating

1 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
2 unauthorized copies of the protected material, (c) inform the person or persons to
3 whom unauthorized disclosures were made of all the terms of this Order, and (d)
4 request that such person or persons execute the “Acknowledgment and Agreement
5 to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain
9 inadvertently-produced material is subject to a claim of privilege or other
10 protection, the obligations of the receiving parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order or agreement that
13 provides for production without prior privilege review. The parties agree to the
14 entry of a non-waiver order under Fed. R. Evid. 502(d) to the extent applicable.

15 10. TERMINATION OF LITIGATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals,
17 each receiving party must return all Designated Material to the producing party,
18 including all copies, extracts, and summaries thereof. Alternatively, the parties
19 may agree upon appropriate methods of destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival
21 copy of all documents filed with the Court, trial, deposition, and hearing

1 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
2 work product, and consultant and expert work product, even if such materials
3 contain Designated Material.

4 The confidentiality obligations imposed by this Order shall remain in effect
5 until a Designating Party agrees otherwise in writing or a court orders otherwise.

6 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
7 Order and provide copies to counsel.

8 **DATED** December 6, 2017.

9 *s/ Rosanna Malouf Peterson*
10 ROSANNA MALOUF PETERSON
11 United States District Judge
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